

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

<b>In Re:</b>	§	<b>Chapter 11</b>
	§	
<b>W.R. GRACE &amp; CO., et al.,</b>	§	<b>Jointly Administered</b>
	§	<b>Case No. 01-01139 (JKF)</b>
<b>Debtors.</b>	§	
	§	

**FEE AUDITOR'S AMENDED FINAL REPORT REGARDING  
FEE APPLICATION OF CAPLIN & DRYSDALE,  
CHARTERED FOR THE NINETEENTH INTERIM PERIOD**

This is the amended final report of Warren H. Smith & Associates, P.C., acting in its capacity as fee auditor in the above-captioned bankruptcy proceedings, regarding the Fee Application of Caplin & Drysdale, Chartered for the Nineteenth Interim Period (the "Application").

**BACKGROUND**

1. Caplin & Drysdale, Chartered ("Caplin") was retained as national counsel to the Official Committee of Asbestos Personal Injury Claimants. In the Application, Caplin seeks approval of fees totaling \$400,120.75 and costs totaling \$25,431.25 for its services from October 1, 2005, through December 31, 2005.

2. In conducting this audit and reaching the conclusions and recommendations contained herein, we reviewed in detail the Application in its entirety, including each of the time and expense entries included in the exhibits to the Application, for compliance with 11 U.S.C. § 330, Local Rule 2016-2 of the Local Rules of the United States Bankruptcy Court for the District of Delaware, Amended Effective February 1, 2001, and the United States Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. 330, Issued

January 30, 1996, (the "Guidelines"), as well as for consistency with precedent established in the United States Bankruptcy Court for the District of Delaware, the United States District Court for the District of Delaware, and the Third Circuit Court of Appeals. We served on Caplin an initial report based on our review, and received a response from Caplin, portions of which response are quoted herein. After the filing of our original final report, we discovered new information that caused us to amend that report.

### **DISCUSSION**

3. In our initial report, we noted that during the application period, DBS (\$220), SAT (\$175) and VW (\$175) spent 47.0 hours and \$12,598.00 on tasks that appear to be of a clerical nature. The entries are provided as Exhibit A. We asked Caplin to explain why the activities cited in Exhibit A should not be viewed as clerical. Caplin responded as follows:

The tasks referenced in paragraph 3 of the Initial Report and performed by paralegals Samira A. Taylor and David B. Smith were not clerical in nature. Ms. Taylor and Mr. Smith were rather performing the following tasks:

- (1) identifying and, using Westlaw, obtaining and marking for attorney review, cases that had been cited in the Debtors bar date motion brief;
- (2) identifying, sorting and marking documents produced in response to a discovery request, again for review by Caplin & Drysdale attorneys;
- (3) reviewing court papers and case files to obtain information for spreadsheets to be employed by Caplin & Drysdale attorneys in plan negotiations;
- (4) reviewing case files and document productions to gather and mark exhibits, including medical records, to be used at depositions;
- (5) reviewing court dockets to gather and mark court pleadings and transcripts for use by Caplin & Drysdale attorneys.

In each instance, the task performed required the identification, analysis and annotation of court filings or, in the case of the discovery requests, documents

relating to a document production. Indeed, the clerical staff is not trained to access and employ either the court's electronic docket system or legal research tools such as Westlaw. Nor does the clerical staff have either the understanding of legal procedure and legal terms needed to identify pleadings and other court filings, or the legal expertise necessary to identify, mark and organize trial and deposition exhibits. Such tasks required legal training and skills and, consequently, were performed by Ms. Taylor and Mr. Smith rather than a clerk or secretary.

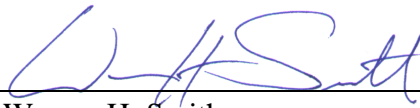
We appreciate the response and agree that, upon further review, time for some of the cited entries should be compensated at normal billing rates. However, we still maintain that such activities as the pulling of exhibits and the compilation and copying of spreadsheets should be billed at no more than \$80.00 per hour. In keeping with that reassessment, we have changed our Exhibit A to reflect those activities for which we still recommend reduction. The total billing for those activities is \$630.00. At \$80.00 per hour, we calculate the billing would have been \$288.00. We thus recommend a reduction of \$342.00 (\$630.00 minus \$288.00) in fees.

#### **CONCLUSION**

4. Thus we recommend approval of fees totaling \$399,778.75 (\$400,120.75 minus \$342.00) and costs totaling \$25,431.25 for Caplin's services from October 1, 2005, through December 31, 2005.

Respectfully submitted,

**WARREN H. SMITH & ASSOCIATES, P.C.**

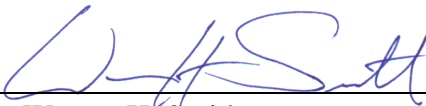
By:   
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**FEE AUDITOR**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been served First Class United States mail to the attached service list on this 9<sup>th</sup> day of June, 2006.

  
Warren H. Smith

**SERVICE LIST**

Notice Parties

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## Exhibit A

11/4/2005	SAT	175.00	0.80	Compilation of spreadsheets listing Trustees, Directors and TAC members, and correspondence history of various bankruptcies.
11/8/2005	SAT	175.00	0.50	Compilation of spreadsheets listing Trustees, Directors and TAC members, and correspondence history of various bankruptcies.
11/9/2005	SAT	175.00	0.70	Compilation of spreadsheets listing Trustees, Directors and TAC members, and correspondence history of various bankruptcies.
11/14/2005	SAT	175.00	0.60	Compilation of spreadsheets listing Trustees, Directors and TAC members, and correspondence history of various bankruptcies.
11/16/2005	SAT	175.00	0.50	Compilation of spreadsheets listing Trustees, Directors and TAC members, and correspondence history of various bankruptcies.
11/17/2005	SAT	175.00	0.10	Compilation of spreadsheets listing Trustees, Directors and TAC members, and correspondence history of various bankruptcies.
12/2/2005	VW	175.00	0.40	Pull exhibits per SC.